



UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

In re	)	Case No. 06-22419-A-13G
JASON CARRY BEARCE,	)	Docket Control No. None
	)	Date: Ex Parte
Debtor.	)	Time: Ex Parte

MEMORANDUM

The chapter 13 debtor, Jason Carry Bearce, has filed a motion seeking to be excused from the requirement of a pre-bankruptcy credit counseling. This request is made because the debtor was unaware of the requirement before filing his petition. His motion will be denied for the reasons explained below.

An individual is prohibited by section 109(h)(1) from being a debtor under any chapter unless that individual has, during the 180 days preceding the filing of the petition, received a "briefing" from an "approved nonprofit budget and credit counseling agency." See In re Fuller, 2005 WL 3454699 (Bankr. W.D. Pa. 2005); In re Rodgers, 2005 WL 3454702 (Bankr. W.D. Pa. 2005); In re Stidham, 2005 WL 3454709 (Bankr. W.D. Pa. 2005); In re Childs, 335 B.R. 623 (Bankr. D. Md. 2005); In re Davenport, 335 B.R. 218 (Bankr. M.D. Fla. 2005); In re Wallace, 338 B.R. 399 (Bankr. E.D. Ark. 2006).

1 In other words, the credit counseling briefing is an  
2 eligibility requirement for bankruptcy relief. Because the  
3 debtor did not receive a briefing, he is ineligible for  
4 bankruptcy relief. The court has no power to waive the  
5 requirement. The court is limited to granting the exemptions  
6 provided by section 109(h)(2) and section 109(h)(4) and to  
7 granting the brief extension of time to receive the briefing  
8 permitted by section 109(h)(3).

9 The debtor has not argued, or even attempted to argue, that  
10 the exemptions provided by section 109(h)(2) or section 109(h)(4)  
11 apply in his case.

12 If the United States Trustee determines that the approved  
13 nonprofit budget and credit counseling agencies for the district  
14 are not reasonably able to provide adequate services, section  
15 109(h)(2)(A) exempts the debtor from the briefing requirement.  
16 Such a determination by the United States Trustee is not a case-  
17 by-case determination. Rather, it is a determination that is  
18 made generally and that must be reviewed not less than annually.  
19 See 11 U.S.C. § 109(h)(2)(B).

20 The United States Trustee has not made a determination for  
21 this district that credit counseling agencies are not able to  
22 provide adequate services. Hence, an exemption under section  
23 109(h)(2) is unavailable in this case.

24 If the court determines, after notice and a hearing, that  
25 the debtor cannot satisfy the requirements of section 109(h)(1)  
26 because of incapacity, disability, or active military duty in a  
27 combat zone, it may grant an exemption from the briefing  
28 requirement. See 11 U.S.C. § 109(h)(4). "Incapacity" is defined

1 as impairment by reason of mental illness or mental deficiency  
2 such that the debtor is incapable of realizing and making  
3 rational decisions with respect to his or her financial  
4 responsibilities. A "disability" requires that the debtor be so  
5 physically disabled as to be unable, after reasonable effort, to  
6 participate in an in-person, telephone, or Internet briefing.

7 There is no evidence in this case that the debtor is  
8 entitled to an exemption under section 109(h)(4).

9 A debtor may also submit a "certification" of exigent  
10 circumstances meriting, to the satisfaction of the court, a 30-  
11 day extension of time to receive the briefing. To obtain this  
12 extension, the certification must describe an "exigent  
13 circumstance" that compelled the debtor to file the petition  
14 without first receiving the briefing. The certification must  
15 also indicate that the debtor requested a pre-filing briefing but  
16 was unable to obtain the counseling services within 5 days of the  
17 request. See 11 U.S.C. § 109(h)(3)(A). The certification must  
18 describe the attempts that were made to obtain a briefing prior  
19 to filing the petition. See In re Cleaver, 333 B.R. 430 (Bankr.  
20 S.D. Ohio 2005); In re Rodriguez, 336 B.R. 462 (Bankr. D. Idaho  
21 2005).

22 Here, the document filed by the debtor is not a  
23 certification of anything other than his ignorance of the credit  
24 counseling requirement. This is not an exigent circumstance. No  
25 exigent circumstances are alleged.

26 Further, the document filed fails to satisfy section  
27 109(h)(3)(A)(ii). It does not state that the debtor requested  
28 counseling but was unable to obtain a briefing for five days,

1 starting on the day of the request. Rather, it is clear that the  
2 debtor never requested counseling.

3 A certificate of exigent circumstances must show, in  
4 addition to some looming exigent circumstance, that the debtor  
5 diligently attempted to obtain credit counseling but was unable  
6 to receive counseling within five days of the request for the  
7 counseling. See In re Burrell, 339 B.R. 664 (Bankr. W.D. Mich.  
8 2006). The request for counseling must be made at least five  
9 days before filing the petition. See In re Dansby, 340 B.R. 564,  
10 568 (Bankr. D.S.C. 2006); In re Cleaver, 333 B.R. 430, 435  
11 (Bankr. S.D. Ohio 2005); In re Talib, 335 B.R. 424, 427 (Bankr.  
12 W.D. Mo. 2005); In re Wallert, 332 B.R. 884, 890 (Bankr. D. Minn.  
13 2005).

14 Therefore, the request filed by the debtor, whether viewed  
15 as a motion to waive credit counseling, to be exempted from it,  
16 or to obtain an extension of time to receive a briefing, must be  
17 denied. A separate order will be entered.

18 Dated: 17 July 2006

19 By the Court

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22 Michael S. McManus, Chief Judge  
23 United States Bankruptcy Court  
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**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA**

**CERTIFICATE OF SERVICE**

**The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that a copy of the document to which this certificate is attached was served by mail to the following entities listed at the address(es) shown below.**

Jason Bearce  
9212 Sundance Ln  
Stockton, CA 95210

Russell D. Greer  
PO Box 3051  
Modesto, CA 95353-3051

Office of the US Trustee  
501 I St, Ste 7-500  
Sacramento, CA 95814

**DATED:**

**JUL 17 2006**

**By:**

  
Deputy Clerk

**Sarah Potter**